

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Vincent Doan,	:	
Petitioner,	:	Case No. 1:00-CV-727
v.	:	Judge Beckwith
Harold Carter, Warden,	:	Magistrate Judge Hogan
Respondent,	:	

***RESPONDENT CARTER'S RESPONSE TO
DOAN'S NOTICE OF SUPPLEMENTAL AUTHORITY***

Apparently unfamiliar with the law in the Sixth Circuit, Doan has now filed a "Notice of Supplemental Authority" in which he contends that *Crawford v. Washington*, 124 S.Ct. 1354 (2004) should be applied retroactively because of the Ninth Circuit's ruling in *Bockting v. Bayer*, 399 F.3d 1010 (9th Cir. 2005).

As noted in Respondent's previously filed "Update of Authorities", circuit after circuit has rejected Doan's claim that *Crawford* is entitled to a retroactive application. Since then, in *Murillo v. Frank*, 402 F.3d 786, 790 (7th Cir., 2005), the Seventh Circuit recognized that *Crawford* does not apply retroactively. The Second and Tenth Circuits have similarly held that *Crawford* should not apply retroactively. See, *Mungo v. Duncan*, 393 F.3d 327 (2d Cir. 2004); *Brown v. Uphoff*, 381 F.3d 1219, 1226-27 (10th Cir. 2004). Thus, if this Court were to seek persuasive authority from other circuits, it should accept the decisions of the Second, Seventh and Tenth Circuits, all of which refused to apply *Crawford*

retroactively.

Far more important than even this, however, is the fact that **the Sixth Circuit has unequivocally held that apply *Crawford* is not entitled to a retroactive application.** *Dorchy v. Jones*, 398 F. 3d 783, 788 (6th Cir. 2005) (Holding that *Crawford* does not apply retroactively). Despite being decided on February 25, 2005, *Dorchy* has already been relied upon and cited by multitude of courts who have refused to apply *Crawford* retroactively. See, *Brandt v. Curtis*, 2005 U.S. App. LEXIS 13662, *13 (6th Cir. 2005)(Exhibit A). *Orey v. Marberry*, 2005 U.S. Dist. LEXIS 9166 (E.D. Mich. 2005)(Exhibit B); *Ohio v. Tarver*, 2005 Ohio App. LEXIS 2910 (2005)(Exhibit C). It is thus settled law, and this Court is bound by, the Sixth Circuit explicit *Dorchy* holding that *Crawford* does not apply retroactively.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General

/s/ Stuart A. Cole
Stuart A. Cole (0020237)
Assistant Attorney General
Corrections Litigation Section
150 E. Gay Street, 16th Floor
Columbus, Ohio 43215-6001
(614) 644-7233
(614) 728-9327 - Fax
scole@ag.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the *Respondent Carter's Response to Doan's Notice of Supplemental Authority* was electronically sent KORT GATTERDAM, Kravitz and Kravitz, 145 East Rich Street, Columbus, Ohio 43215 on this 29th day of July, 2005.

/s/ Stuart A. Cole
Stuart A. Cole
Assistant Attorney General